

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, LOCAL 429
and its agent NASHVILLE ELECTRICAL
JOINT APPRENTICESHIP TRAINING
COMMITTEE (JATC)

and

CASE 26-CB-4240

DANNY PAGE, an Individual

Rosalind Eddins, Esq.,
for the General Counsel
R. Jan Jennings, Esq. (Branstetter,
Kilgore, Stranch and Jennings)
of Nashville, Tennessee, for the Respondent
Martin J. Crane, Esq.
(Sherman, Dunn, Cohen, Leifer and Yelig),
of Washington, D.C.,
for the Nashville Joint Apprenticeship
Training Committee

BENCH DECISION AND CERTIFICATION

Statement of the Case

KELTNER W. LOCKE, Administrative Law Judge: I heard this case on March 13 and 14, 2003 in Nashville, Tennessee. After the parties rested, I heard oral argument on March 18, 2003. On March 19, 2003, I issued a bench decision pursuant to Section 102.35(a)(1) of the Board's Rules and Regulations, setting forth findings of fact and conclusions of law. In accordance with Section 102.45 of the Rules and Regulations, I certify the accuracy of, and attach hereto as "Appendix A," the portion of the transcript containing this decision.¹ The Conclusions of Law and Order are set forth below.

¹ The bench decision appears in uncorrected form at pages 601 through 616 of the transcript. The final version, after correction of oral and transcriptional errors, is attached as Appendix A to this Certification.

Additionally, I hereby note and correct the following errors in the transcript and exhibits:

The transcript, at page 2, inadvertently identified R. Jan Jennings, Esq., as counsel for the Charging Party and Martin J. Crane, Esq., as counsel for Respondent. As shown in the

CONCLUSIONS OF LAW

1. Respondent, International Brotherhood of Electrical Workers, Local 429, is a labor organization within the meaning of Section 2(5) of the Act.

2. Respondent represents, for purposes of collective-bargaining, employees of one or more employers which meet the Board's jurisdictional standards. Respondent is subject to the Board's jurisdiction in this case.

3. The Nashville Electrical Joint Apprenticeship Training Committee (JATC) is a federal tax exempt educational organization providing training to electrician apprentices, but is not a labor organization within the meaning of Section 2(5) of the Act and is not the Respondent's agent, as had been alleged in the Complaint.

4. Because the JATC is neither a labor organization within the meaning of Section 2(5) of the Act nor Respondent's agent, assertion of jurisdiction over JATC in this proceeding is inappropriate.

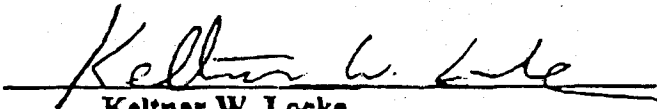
5. Neither Respondent nor JATC violated the Act in any manner alleged in the Complaint.

On the findings of fact and conclusions of law herein, and on the entire record in this case, I issue the following recommended²

ORDER

The Complaint is dismissed in its entirety.

Dated Washington, D.C. April 15, 2003


Keltner W. Locke
Administrative Law Judge

caption above, Mr. Jennings represented Respondent in this proceeding, and Mr. Crane represented the Nashville Electrical Joint Apprenticeship Training Committee.

Additionally, the court reporting service inadvertently labeled the exhibits of the Joint Area Training Committee (JATC) as "Employer's Exhibits." In accordance with the parties' practice during the hearing, these documents should be referred to as "JATC Exhibits." The documents labeled "Union Exhibits" by the court reporting service are the Respondent's exhibits.

If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, these findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board, and all objections to them shall be deemed waived for all purposes.

APPENDIX A

This is a bench decision in the case of International Brotherhood of Electrical Workers Local 429 and Nashville Electrical Joint Apprenticeship Training Committee (JATC) and Danny Page, an Individual, Case 26-CB-4240. This decision is issued pursuant to Section 102.35(a)(10) and Section 102.45 of the Board's Rules and Regulations.

The Complaint alleges that the Nashville Joint Apprenticeship Training Committee, which I will call the "JATC," is an agent of International Brotherhood of Electrical Workers Local 429, which I will call the "Union." It further alleges that the Union caused the JATC to discriminate against an apprentice, Danny Page, whom I will call "Page" or the "Charging Party," because Page had failed to pay union dues. Because credible evidence does not support these allegations, I recommend that the Complaint be dismissed.

Preliminary Matters

The General Counsel has established that the Charging Party filed and served the charge as alleged in the Complaint. I so find.

The government also has established that the Union is a labor organization within the meaning of Section 2(5) of the Act, and I so find. Based upon the parties' stipulation at hearing, I also find that the government has established that this matter falls within the Board's statutory jurisdiction and meets the Board's discretionary standards for the assertion of jurisdiction.

JATC's Status

The Union represents journeyman and apprentice electricians employed by a number of contractors in the construction industry in middle Tennessee. These construction contractors engage in collective bargaining with the Union through their multiemployer association, the Middle Tennessee Chapter of the National Electrical Contractors Association, which I will call the "Employer Association."

The parties to this collective bargaining process have established by agreement an Apprenticeship and Training Trust Fund, to be used solely to select and train apprentices to be journeyman electricians. The employers' contributions, in amounts specified in their collective-bargaining agreement with the Union, pay for the trust fund.

A board of trustees manages the trust fund. The Employer Association appoints four board members and the Union appoints an equal number. Should the board split evenly in deciding a question, they may refer the issue to an umpire appointed by the Employer Association and the Union.

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5 The board of trustees must comply with the Employee Retirement Income Security Act of 1974, known as "ERISA." Further, because the trust enjoys tax exempt status under Section 501(c)(3) of the Internal Revenue Code, it is subject to the restrictions applicable to such tax exempt organizations.

10 Although the board of trustees has responsibility for the trust fund, the creation and operation of the training program itself falls to another body, the Joint Apprenticeship Training Committee, or JATC. The collective-bargaining agreement between the Employer Association and the Union created the JATC. The Employer Association appoints four of the eight JATC members and the Union appoints the other four.

15 From time to time, the JATC formulates written apprenticeship and training standards for its program. It submits them to the United States Department of Labor, Bureau of Apprenticeship and Training for review. Periodically, the Bureau of Apprenticeship and Training will conduct an audit to be sure that the program follows these standards and complies with applicable laws and regulations. A Department of Labor official also offers the JATC informal guidance in operating the apprenticeship program.

20 As already noted, the Complaint in this case alleges that the JATC acted as the Union's agent when it took certain actions against apprentice Page. The General Counsel bears the burden of proving, by a preponderance of the evidence, that such a relationship exists.

25 Neither the trust agreement itself nor any other document in the record establishes such an agency relationship. Although the Union appoints four members of the eight-person board of trustees, it has no right to control the actions of these members in their capacity as trustees. Similarly, although the Union appoints four of the eight JATC members, the record fails to establish that it had any authority to dictate how they would vote as Committee members. Were
30 the right of appointment the same as the right of control, then the federal judiciary itself would not be independent, which is hardly the case.

35 The documents creating the trust and the JATC clearly contemplate that the apprenticeship program be administered independently, and nothing in these documents confers authority on the administrators to act as agents for the Union. Having concluded that nothing on paper creates an agency relationship, I will look now to how the JATC operates in practice.

40 The record does not disclose that the Union, or any Union representative, sought to influence the JATC in making decisions about Apprentice Page. Similarly, the record fails to establish that the officials who made these decisions were influenced by the Union or by their own personal opinions about the desirability of union membership. Crediting their testimony, which I conclude is reliable, I find that they were not.

45 In sum, I find that the JATC was not the Union's agent at any material time. Therefore, I conclude that no statutory basis exists in this case for the assertion of jurisdiction over the JATC.

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What Happened to Page

5 Apprentices in the JATC's program receive both classroom instruction and on-the-job training. To progress in the program, an apprentice must attend classes. The JATC may impose discipline on apprentices who fail to do so.

10 In 1995, Daniel Page was an apprentice who received such discipline. Specifically, the JATC's training director, Elbert Carter, sent Page a December 22, 1995 letter stating as follows:

At the JATC trustees committee meeting on Thursday, December 21, 1995, the trustees' decision regarding your 4 absences from class was that you are to be placed on 3 months probation and that your next pay raise is to be delayed 3 months from the date of your next expected pay raise.

For on-the-job training, the JATC assigns each apprentice to a particular electrical contractor. The contractor evaluates the apprentice's work and sends the evaluation to the JATC.

20 In early February 1997, Apprentice Page was working for Amprite Electric. This employer discharged Page and sent the JATC an evaluation stating that Page had refused to wear the employer's identification badge. After the JATC considered this matter, its training director sent page a March 26, 1997 letter which stated as follows:

25 At the committee meeting of February 27, 1997, the decision made concerning your recent firing from Amprite Electric was that you be sent back to work and that you be placed on probation until the start of the next school year of 1997 - 1998 and that your next pay raise is delayed 3 months from the date of the next scheduled pay raise. The committee also decided that if problems continue on the job or at school, then you are subject to dismissal from this program.

30 The JATC then sent Page to work for another electrical contractor. On October 9, 1997, Page's employer, Butcher-United Electric, discharged him. The JATC then terminated Page's apprenticeship. Page requested reconsideration but, at a January 8, 1998 meeting, the JATC decided not to reinstate him.

35 In August 2001, Page reapplied for admission to the apprenticeship program. He did so because he wanted to work for a company operated by his father, Larry Page. That company, Elec-Tech Electric, had a collective-bargaining agreement with the Union and could only employ apprentices who were enrolled in the JATC program. The JATC allowed Page to return to the apprenticeship program and he began working for Elec-Tech.

45 Section 14(b) of the National Labor Relations Act allows a state to enact a law prohibiting collective-bargaining agreements which require union membership as a condition of employment. Tennessee has such a law and apprentices do not have to belong to the Union to work for employers in the JATC program.

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When Page returned to the apprenticeship program, at first he did not pay union dues. He had not been happy with the Union, believing it should have done more to prevent his termination from the apprenticeship program in 1997. According to Page, in January 2002, one of the Union's business agents stopped Page on his way to class and said, "you need to get your dues straightened out." Page answered, "I know" and the business agent, Gerald Grant, did not say anything else at that time.

In April or May 2002, while Page was on his way to class, the JATC's training director called him into an office. Also present were the Union's business manager, Lindsay Lee (also known as Jerry Lee), and a business agent, Gerald Grant. They raised the subject of Page's nonpayment of dues and told him that if he didn't pay the dues, he would give up the benefits associated with union membership.

Page testified Lee and Grant also told him that if he did not pay the dues, he would be "rotated" to another employer. In other words, if Page failed to pay the dues the JATC would withdraw him from employment with Elec-Tech and assign him to work for another contractor. Lee and Grant deny making such a threat. For reasons discussed later in this decision, I do not conclude that Page's testimony is reliable and I do not credit it. Therefore, I find that Grant and Lee did not threaten to rotate Page's work assignment if he failed to pay his dues.

After this meeting, Page went on to class and the JATC training director, Elbert Carter, went with him. Carter told Page that he did not have to be a union member to work at Elec-Tech, but Carter encouraged Page to belong. Page decided to join the Union. His father paid Page's union dues for the first four months, and Page paid the union dues for an additional three months.

On July 8, 2002, Daniel Page received a call from his father, who reported that he had been contacted by a Union official named Mike Bearden concerning Page's union dues. The next day, Page contacted the Union and spoke with the one union official available at that time. Page told the official about his dissatisfaction with the Union. Page also explained that he had religious objections to union membership and announced that he was resigning his membership. This union officer, John Hooper, referred Page to the business manager, Jerry Lee.

On July 9, 2002, three members of the JATC attended a specially called committee meeting. The minutes of that meeting identify two of them, John Hooper and Gerald Grant, as "FOR I.B.E.W." and the other, Bert Noll, as "FOR N.E.C.A.," the contractors' association. The JATC training director, Elbert Carter, also was present. The minutes of that meeting state, in part:

The director brought up Danny Page as a possible rotation candidate at this time as he has had a problem stabilizing in an unprotected environment in the past. The director suggested a rotation from his father's shop to assure this committee that Danny can work at other places without conflict. A motion was made and approved to rotate Danny to another contractor.

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On July 11, 2002, the JATC's training director, Elbert Carter, sent a fax to Page's employer, announcing that he was removing Page from employment at Elec-Tech effective July 19, 2002. The letter explained that "Danny [Page] is being rotated to another job assignment."

Also on July 11, 2002, Carter sent a certified letter to Daniel Page notifying him that the JATC was removing him from employment at Elec-Tech as of July 19, 2002, that he should report to a specified medical center for a drug screen and that "Once the negative drug test results are reported to our office, we will reassign you to another contractor."

The record suggests that the JATC routinely requires apprentices to undergo a drug test before being assigned to work. The General Counsel does not contend that requiring Page to take such a drug test violated the Act.

The record suggests that in general, employers participating in the apprenticeship program opposed the rotation of apprentices because of the disruptions such rotations caused to their workforce. Page's employer was no exception. Elec-Tech sent Carter a July 17, 2002 reply protesting Page's reassignment. "Removal of a properly trained apprentice with established customer relationships," they wrote, did not seem to be a proper method of getting a grip on the problems besetting the industry.

On July 18, 2002, JATC Training Director Carter sent Elec-Tech a reply. Carter wrote, in part, that he was "sorry to inform you that I can not delay Danny's rotation from your organization." The letter then described how Page could appeal the decision and suggested that Page should "request in writing to appear before this committee at their next meeting on July 24, 2002."

Meanwhile, Page's father went to the Union hall to pay his son's dues. However, Union official Gerald Grant told him that Daniel Page would have to write a letter to the Union explaining why he was behind in his payment of dues.

Although Carter's July 18 letter to Elec-Tech had suggested that Daniel Page submit a written request to appear before the JATC on February 24, it appears that Page would not have to do so. Instead, Carter notified Page by July 19 letter that the Committee wanted Page to appear on July 24.

On July 24, the JATC heard from both the father, Larry Page, and the son, Daniel Page. The minutes of that meeting report that after the father spoke, presumably opposing the rotation of his son, the Committee voted twice. The first time, the Committee split 4 to 4, leaving unaffected the decision to rotate Page. The Committee then voted again and unanimously decided to rescind the rotation, resulting in Page remaining assigned to work at Elec-Tech.

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Although the JATC minutes are not entirely clear on the sequence of events, it appears that Daniel Page appeared before the Committee after his father did and after the Committee voted to rescind the rotation. The minutes describe Daniel Page's appearance in one paragraph, which states as follows:

Danny Page appeared before the committee at 3:20 p.m. He informed the committee [sic] that the National Labor Relations Board was reviewing the committee action as to rotation of him for Elec-Tech. The committee was informed that he was instructed by the NLRB's Stacy Smith not to talk to this committee in regard to anything.

The JATC decided to conduct a special meeting the next day. Pursuant to the Committee's request, Daniel Page attended this meeting. In 1997, when the JATC considered the possible dismissal of Page from the apprenticeship program, he had tape recorded some of his interactions with the Committee. So, at the July 25, 2002 meeting, Committee members asked Page if he was taping them. He said he was not.

Page told the Committee, in essence, that he had been advised by the NLRB attorney, Stacy Smith, and the state director of the Bureau of Apprenticeship and Training, Nathaniel Brown, that he, Page, did not have to answer the Committee's questions. The JATC training director then called Brown, who denied making such a statement to Page. When the JATC investigated this matter further, Page did not cooperate.

At a JATC meeting on September 4, 2002, the Committee decided to discipline Page. Training Director Carter notified Page by September 6, 2002 letter, which stated as follows:

At the Nashville Electrical J.A.T.C. meeting on September 4, 2002, the Members/Trustees found that you did not comply with the letter dated July 11, 2002 (see attached). You also misinformed the Members/Trustees as to what was said by the B.A.T. involving this matter. The Nashville Electrical J.A.T.C. has been given authority by [sic] over the school and all related training issues. This authority has been given to this J.A.T.C. by the IBEW-NECA contractual agreement and the U.S. Department of Labor/Bureau of Apprenticeship Training.

The Members/Trustees are going to delay your next scheduled pay increase six (6) months and you will be on probation for the duration of this program. Any infraction of the policies or standards during this time will result in dismissal.

The government contends that in taking this disciplinary action, as well as in deciding to rotate Page to work for another employer, the JATC acted as the Union's agent. As already discussed, I conclude that the JATC had neither the actual nor apparent authority to act as an agent for the Union. Therefore, I recommend dismissal of the Complaint on that basis.

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5 Additionally, I find that in taking these actions, the Committee members were not motivated at all by Page's nonpayment of union dues or by Page's status as a union member or nonmember. This conclusion flows from the resolution of issues regarding the credibility of the witnesses.

10 The Tennessee State Director of the Bureau of Apprenticeship and Training, Nathaniel Brown, testified that he never told Page that Page did not have to answer the JATC's questions. For several reasons, I credit Brown. He is a federal official, employed by the United States Department of Labor, testifying in a federal administrative proceeding. As a government official, he had no interest in the outcome of this proceeding. For these reasons, I am quite inclined to believe he told the truth. Moreover, based on my observations of the witnesses, I conclude that Brown's testimony is reliable.

15 My conclusion that Brown told the truth leads inexorably to the conclusion that when Daniel Page appeared before the Committee, he did not. Therefore, I do not credit Page's testimony to the extent it conflicts with that of other witnesses.

20 Additionally, when Page's father tried to pay his son's Union dues, the Union would not accept the money. It wanted an explanation from the son. It is difficult to believe that the Union was putting pressure on the JATC to coerce Page into paying the union dues, or to penalize him for refusing to pay, when the Union itself would not accept the money.

25 Members of the JATC, as well as its training director, may well have harbored animosity towards Page because of the way he acted in 1997 when the Committee discharged him from the apprenticeship program. In addition to tape recording the meetings, Page threatened to have Training Director Carter fired. However, the record does not establish that Page engendered animosity by engaging in any activities protected by the National Labor Relations Act.

30 Moreover, the JATC had a legitimate reason for wishing to transfer Page. During his previous apprenticeship, two employers had fired him. One of them reported to the JATC that it discharged Page because he would not wear an ID badge. Receiving this information, the Committee had some reason to doubt Page's maturity.

35 When Page returned to the apprenticeship program, he worked only for his father's company, where such immaturity might be overlooked. Considering the patterns of employment in the construction industry, where the Union refers workers to many different employers for projects of relatively short duration, the JATC had a very legitimate reason to be concerned that
40 Page could work maturely with any contractor, not just his father's company.

45 For these reasons, the JATC's decision to rotate Page was reasonable. Similarly, the JATC's decision to discipline Page for lying to the Committee is quite understandable, particularly considering that Page attributed untrue statements to a public official. I find that these lawful reasons, not a concern about payment of Union dues, motivated the JATC.

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The record contains very little evidence to suggest unlawful motivation. At one meeting, a Committee member, Bert Noll, did make an offhand comment that "this is about union dues."

5 However, I conclude that he made this comment sarcastically, in response to Page's perseveration on the topic of union dues, a matter of no concern to the Committee.

10 The timing of the Committee's action also raises some question. However, timing alone, unsupported by other evidence, can lead to the fallacy of logic described by the Latin phrase *post hoc ergo propter hoc*. There is a difference between sequence and consequence. Although suspicious timing alone may sometimes support a conclusion of unlawful motivation, particularly in the absence of some other, plausible explanation for an action, here, the JATC's asserted reasons, which are lawful, are quite plausible.

15 Concluding that the JATC acted without unlawful motivation, I recommend that the Complaint be dismissed.

20 When the transcript of this proceeding has been prepared, I will issue a Certification which attaches as an appendix the portion of the transcript reporting this bench decision. This Certification also will include provisions relating to the Findings of Fact, Conclusions of Law, and Order. When that Certification is served upon the parties, the time period for filing an appeal will begin to run.

25 Thank you for the great professionalism and courtesy shown by all counsel during this proceeding. The hearing is closed.

P R O C E E D I N G S

3:07 p.m.

THE COURT: We'll go on the record now.

THE REPORTER: Thank you.

THE COURT: This is a bench decision in the case of International Brotherhood of Electrical Workers Local 429 and Nashville Electrical Joint Apprenticeship Training Committee, that's JATC and Danny Page, an individual, Case 26-CB-4240.

This decision is issue pursuant to Section 102.35(a)(10) and Section 102.45 of the Board's rules and regulations.

The complaint alleges that the Nashville Joint Apprenticeship Training Committee, which I will call "the JATC," is an agent of International Brotherhood of Electrical Workers Local 429, which I will call "the Union." It further alleges that the Union caused the JATC to discriminate against an apprentice, Danny Page, whom I will call "Page" or "the Charging Party," because Page had failed to pay union dues.

Because credible evidence does not support these allegations, I recommend that the complaint be dismissed.

Preliminary Matters:

The General Counsel has established that the Charging Party filed and served the charge as alleged in the complaint, I so find. The Government also has established that the Union is a labor organization within the meaning of Section 25 of the Act, and I so find.

1 Based upon the parties' stipulation adhering (phon.) I
2 also find that the Government has established that this matter
3 falls within the Board's statutory jurisdiction and meets the
4 Board's discretionary standards for the assertion of
5 jurisdiction.

6 JATC Status:

7 The Union represents journeymen and apprentice
8 electricians employed by a number of contractors in the
9 construction industry in Middle, Tennessee (phon.). These
10 construction contractors engage in collective bargaining with
11 the Union through their multi-employer association, the
12 Middle, Tennessee Chapter of the Electrical Contractors
13 Association, which I will call "the Employer Association."

14 The parties to this collective bargaining process have
15 established by agreement an apprenticeship and training trust
16 fund to use solely to select and train apprentices to be
17 journeymen electricians. Employer contributions in amounts
18 specified in their collective bargaining agreement with the
19 Union pay for the trust fund.

20 A board of trustees manages the trust fund. The
21 employer association appoints four board members, and the
22 Union appoints an equal number. If the board is split evenly
23 in deciding a question, they may refer the issue to an umpire
24 appointed by the employer association and the Union.

25 The board of trustees must comply with the Employee

1 Retirement Income Security Act of 1974, known as ERISA.

2 Further, because the trust enjoys tax exempt status under
3 Section 501(c)(3) of the Internal Revenue code, it is subject
4 to the restrictions applicable to such tax exempt
5 organizations.

6 Although the board of trustees has responsibility for
7 the trust fund, the creation and operation of the training
8 program itself falls to another body, the Joint Apprenticeship
9 Training Committee or JATC. The collective bargaining
10 agreement between the employees association and the Union
11 created the JATC. The employer association appoints four of
12 the eight JATC members, and the Union appoints the other four.

13 From time to time the JATC formulates written
14 apprenticeship and training standards for its program. It
15 submits them to the United States Department of Labor, Bureau
16 of Apprenticeship and Training for review. Periodically, the
17 Bureau of Apprenticeship and Training will conduct an audit to
18 be sure that the program follows these standards and complies
19 with applicable laws and regulations. The Department of Labor
20 official also offers the JATC informal guidance in operating
21 the apprenticeship program.

22 As already noted, the complaint in this case alleges
23 that the JATC acted as the Union's agent when it took certain
24 actions against apprentice Page. The General Counsel bears
25 the burden of proving by a preponderance of the evidence that

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1 such a relationship exists.

2 Neither the trust agreement itself nor any other
3 document in the record establishes such an agency
4 relationship. Although the Union appoints four members to the
5 eight person board of trustees, it has no right to control the
6 actions of these members in their capacity as trustees.

7 Similarly, although the Union appoints four of the eight JATC
8 members, the records fails to establish that it had any
9 authority to dictate how they would vote as committee members.

10 Were the right of appointment the same as right of
11 control, then the federal judiciary itself would not be
12 independent, which is hardly the case. The documents
13 (indiscernible) the trust in the JATC clearly contemplate that
14 the apprenticeship program be administered independently, and
15 nothing in these documents confers authority on the
16 administrators to act as agents of the Union.

17 Had it concluded that nothing on paper creates an
18 agency relationship, I will now look to how the JATC operates
19 in practice. The record does not disclose that the Union or
20 any union representative sought to influence the JATC in
21 making decisions about apprentice Page. Similarly, the record
22 fails to establish that the officials who made these decisions
23 were influenced by the Union or by their own personal opinions
24 about the desirability of union membership, crediting their
25 testimony, which I concluded reliable, I find that they did

1 not.

2 In sum, I find that the JATC was not the Union's agent
3 in the material time. Therefore, I conclude that no statutory
4 basis exists in this case for the assertion of jurisdiction
5 over the JATC.

6 What happened to Page? Apprentices in the JATC program
7 receive both classroom instruction and on-the-job training.

8 To progress in the program, an apprentice must attend
9 classes. The JATC may impose discipline on apprentices who
10 fail to do so.

11 In 1995 Daniel Page was an apprentice who received such
12 discipline, specifically to JATC's training director, Elbert
13 Carter, sent Page a December 22nd, 1995, letter stating as
14 follows: "At the JATC trustee committee meeting on Thursday,
15 December 21, 1995, the trustees' decision regarding your four
16 absences from class was that you are to be placed on three
17 months' probation, and that your next pay raise to be delayed
18 three months from the date of your next expected pay raise."

19 For on-the-job training, the JATC assigned each
20 apprentice to a particular electrical contractor. The
21 contractor evaluates the apprentice's work and send the
22 evaluation to the JATC.

23 In early February 1997, apprentice Page was working for
24 Amp-Right Electric (phon.). This employer discharged Page and
25 sent the JATC an evaluation, stating that Page had refused to

1 wear the employer's identification badge.

2 After the JATC considered this matter, its training
3 director sent Page a March 26th, 1997, letter which stated as
4 follows: "At the committee meeting of February 27, 1997, the
5 decision made concerning your recent firing from Amp-Right
6 Electric was that you be sent back work, and that you be
7 placed on probation until the start of the next school year of
8 1997/1998, and that your next pay raise is delayed three
9 months from the date of the next scheduled pay raise. The
10 committee also decided that if problems continue on the job or
11 at school, then you are subject to dismissal from this
12 program."

13 The JATC then sent Page to work for another electrical
14 contractor. On October 9, 1997, Page's employer, Butcher
15 United Electric (phon.), discharged him. The JATC then
16 terminated Page's apprenticeship. Page professed a
17 reconsideration (phon.) but at a January 8th, 1998, meeting,
18 the JATC decided not to reinstate him.

19 From August 2001 Page reapplied for admission to the
20 apprenticeship program. He did so because he wanted to work
21 for a company operated by his father, Larry Page. That
22 company, Elec-Tech Electric, had a collective bargaining
23 agreement with the Union and could only employ apprentices who
24 were enrolled in the JATC program.

25 The JATC allowed Page to return to the apprenticeship

1 program, and he began working for Elec-Tech. Section 14(b) of
2 the National Labor Relations Act allows the state to enact law
3 prohibiting collective bargaining agreement which require
4 union membership as a condition of employment. Tennessee has
5 such a law, and apprentices do not have to belong to the Union
6 to work for employers in the JATC program.

7 When Page returned to the apprenticeship program, at
8 first he did not pay union dues. He had not been happy with
9 the Union, believing it should have done more to prevent his
10 termination from the apprenticeship program in 1997.

11 According to Page, in January 2002, one of the Union's
12 business agents, stopped in as Page was on his way to class
13 and said, you need to get your dues straightened out. Page
14 answered, I know, and the business agent, Gerald Grant, did
15 not say anything else at that time.

16 In April or May of 2002, while Page was on his way to
17 class, the JATC's training director called him into an office.

18 Also present was the Union's business manager, Lindsey Lee,
19 also known as Jerry Lee, and a business agent, Gerald Grant.

20 They raised the subject of Page's nonpayment of dues and told
21 him that if he didn't pay the dues, he would give up the
22 benefits associated with union membership.

23 Page testified that Lee and Grant also told him that if
24 he did not pay the dues, he would be rotated to another
25 employer. In other words, if Page failed to pay the dues, the

1 JATC would withdraw him from employment with Elec-Tech and
2 assign him to work for another contractor. Lee and Grant deny
3 making such a threat.

4 For reasons discussed later in this decision, I do not
5 conclude that Page's testimony was reliable, and I do not
6 credit it. Therefore, I find that Grand and Lee did not
7 threaten to rotate Page's work assignment if he failed to pay
8 his dues.

9 After this meeting, Page went on to class and the JATC
10 training director, Elbert Carter, went with him. Carter told
11 Page that he did not have to be a union member to work at
12 Elec-Tech, but Carter encouraged Page to belong.

13 Page decided to join the Union. His father paid
14 Page's dues for the first four months, and Page paid the dues
15 for an additional three months.

16 On July 8, 2002, Daniel Page received a call from his
17 father who reported that he had been contacted by a union
18 official named Mike Beardon concerning Page's union dues. The
19 next day Page contacted the Union and spoke with the one union
20 official available at that time. Page told the official about
21 his dissatisfaction with the Union. Page also explained that
22 he had religious objections to union membership and announced
23 that he was resigning his membership. This union officer,
24 John Hooper, referred Page to the business manager, Jerry Lee.

25 On July 9, 2002, three members of the JATC attended a

1 specially called committee meeting. The minutes of that
2 meeting identify two of them, John Hooper and Gerald Grant as
3 four IBEW, and the other, Bert Noll as for NECA, the
4 contractors association. The JATC training director, Elbert
5 Carter, also was present.

6 The minutes of that meeting state in part, "The
7 director brought up Danny Page as a possible rotation
8 candidate at this time, as he has had a problem stabilizing in
9 an unprotected environment in the past. The director
10 suggested rotation from his father's shop to assure this
11 committee that Danny could work at other places without
12 conflict. The motion was made approved to rotate Danny to
13 another contractor."

14 On July 11, 2002, the JATC's training director, Elbert
15 Carter, sent a fax to Page's employer announcing that he was
16 removing Page from employment at Elec-Tech effective July 19,
17 2002. The letter explained that "Danny is being rotated to
18 another job assignment."

19 Also on July 11, 2002, Carter sent a certified to
20 Daniel Page notifying him that the JATC was removing him from
21 employment at Elec-Tech as of July 19th, 2002, that he should
22 report to a specified medical center for a drug screening, and
23 that "once the negative drug test results are reported to our
24 office, we will reassign you to another contractor."

25 The record suggests that the JATC routinely requires

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1 apprentices to undergo a drug test before being assigned to
2 work. The General Counsel does not contend that requiring
3 Page to take such a drug test violates the Act.

4 The record suggests that in general employers
5 participating in the apprenticeship program oppose the
6 rotation of apprentices because of the disruption of such
7 rotation (indiscernible) their work force. Page's employer
8 was no exception. Elec-Tech sent Carter a July 17, 2002,
9 reply protesting Page's reassignment. "Removal of a properly
10 trained apprentice with established customer relationship,"
11 they wrote, "did not seem to be a proper method of getting a
12 grip on the problems besetting the industry."

13 On July 18, 2002, JATC training director, Carter, sent
14 Elec-Tech a reply. Carter wrote in part that he was "sorry to
15 inform you that I cannot delay Danny's rotation from your
16 organization." The letter then described how Page could
17 appeal the decision and suggested that Page should "request in
18 writing to appear before this committee at the next meeting on
19 July 24, 2002."

20 Meanwhile, Page's father went to the union hall to pay
21 his son's dues. However, Union official Gerald Grant told him
22 that Daniel Page would have to write a letter explaining why
23 he was behind in his payment of dues. Although Carter's July
24 18 letter to Elec-Tech had suggested that Daniel Page submit a
25 written request to appear before the JATC on February 24th

1 (sic), it appears that Page would not have to do so. Instead,
2 Carter notified Page by July 19 letter that the committee
3 wanted Page to appear on July 24.

4 On July 24, the JATC heard from both father, Larry
5 Page, and son, Daniel Page. The minutes of that meeting
6 report that after the father spoke, presumably opposing the
7 rotation of his son, the committee voted twice. The first
8 time the committee split four to four leaving (phon.)
9 unaffected the decision to rotate Page. The committee then
10 voted again and unanimously decided to rescind the rotation,
11 resulting in Page remaining behind to work at Elec-Tech.

12 Although the JATC minutes are not entirely clear on the
13 sequence of events, it appears that Daniel Page appeared
14 before the committee after his father did and after the
15 committee voted to rescind the rotation. The minutes describe
16 Daniel Page's appearance in one paragraph, which states as
17 follows: "Danny Page appeared before the committee at 3:20
18 p.m. He informed the committee that the National Labor
19 Relations Board was reviewing the committee action as to
20 rotation of him for Elec-Tech. The committee was informed
21 that he was instructed by the NLRB's Stacy Smith not to talk
22 to this committee in regard to anything."

23 The JATC decided to conduct a special meeting the next
24 day. Pursuant to the committee's request, Daniel Page
25 attended this meeting. In 1997 when the JATC considered the

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1 possible dismissal of Page from the apprenticeship program, he
2 had tape recorded some of his interactions with the committee.

3 Though at the July 25, 2002, meeting committee members asked
4 Page if he was taping them. He said he was not.

5 Page told the committee in essence that he had been
6 advised by the NLRB attorney Stacy Smith and the state
7 director of the Bureau of Apprenticeship and Training,
8 Nathaniel Brown, that he, Page, did not have to answer the
9 committee's questions. The JATC training director then called
10 Brown, who denied making such a statement to Page. When the
11 JATC investigated this matter further, Page did not cooperate.

12 At a JATC meeting on September 4, 2002, the committee
13 decided to discipline Page. Training director Carter notified
14 Page by September 6, 2002, letter that stated as follows: "At
15 a National Electrical JATC meeting on September 4, 2002, the
16 members/trustees found that you did not comply with the letter
17 dated July 11, 2002. See attached. You also misinformed the
18 members/trustees of what was said by the BAT involving this
19 matter. The National Electrical JATC has been given authority
20 by (indiscernible) and all related training issues. This
21 authority has been given to this JATC by the IBEW NECA
22 contractual agreement and the U.S. Department of Labor Bureau
23 of Apprenticeship Training. The members/trustees are going to
24 delay you next scheduled pay raise six months, and you will be
25 on probation for the duration of this program. Any infraction

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1 of the policies or standards during this time will result in
2 dismissal."

3 The Government contends that in taking this
4 disciplinary action as well as in deciding to rotate Danny to
5 work for another employer, the JATC acted as the Union's
6 agent. As already discussed, I conclude that the JATC had
7 neither the actual nor apparent authority to act as an agent
8 for the Union. Therefore, I recommend dismissal of this
9 complaint on that basis.

10 Additionally, I find that in taking these actions the
11 committee members were not motivated at all by Page's
12 nonpayment of union dues or by Page's status as a union member
13 or nonmember. This conclusion goes to the resolution of
14 issues regarding the credibility of the witnesses. The
15 Tennessee State Director of the Bureau of Apprenticeship and
16 Training, Nathaniel Brown, testified that he never told Page
17 that Page did not have to answer the JATC's questions.

18 For several reasons, I credit Brown. He's a federal
19 official employed by the United States Department of Labor,
20 testifying in a federal, administrative proceeding. As a
21 government official, he had no interest in the outcome of this
22 procedure. For these reasons, I am quite inclined to believe
23 he told the truth. Moreover, based upon my observation of the
24 witnesses, I conclude that Brown's testimony is reliable.

25 My conclusion that Brown told the truth leads

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1 inexplicably to the conclusion that when Daniel Page appeared
2 before the committee, he did not. Therefore, I do not credit
3 Page's testimony to the extent it conflicts with that of other
4 witnesses.

5 Additionally, when Page's father tried to pay his son's
6 union dues, the Union would not accept the money. It wanted
7 an explanation from the son. It is difficult to believe that
8 the Union was putting pressure on the JATC to coerce Page into
9 paying the union dues or to penalize him for refusing to pay
10 when the Union itself would not accept the money.

11 Members of the JATC, as well as its training director,
12 may well have harbored animosity towards Page because of the
13 way he acted in 1997 when the committee discharged him from
14 the apprenticeship program. In addition to tape recording the
15 meeting, Page threatened to have training director Carter
16 fired. However, the record does not establish that Page
17 engendered animosity by engaging in any activity protected by
18 the National Labor Relations Act.

19 Moreover, the JATC had a legitimate reason for wishing
20 to transfer Page. During his previous apprenticeship two
21 employers had fired him. One of them reported to the JATC
22 that it discharged Page because he would not wear an ID badge.

23 Receiving this information, the committee had some reason to
24 doubt Page's maturity.

25 When Page returned to the apprenticeship program, he

1 worked only for his father's company where such immaturity
2 might be overlooked. Considering the patterns of employment
3 in the construction industry where the Union refers workers to
4 many different employers for projects of relative short
5 duration, the JATC had a very legitimate reason to be
6 concerned that Page could work maturely with any contractor,
7 not just his father's company.

8 For these reasons, the JATC's decision to rotate Page
9 was reasonable. Similarly, the JATC's decision to discipline
10 Page for lying to the committee is quite understandable,
11 particularly considering that Page attributed untrue
12 statements to public a official.

13 I find that these non-discriminatory reasons, not a
14 concern about paying union dues, motivated the JATC. The
15 record contains very little evidence to suggest unlawful
16 motivation. At one meeting a committee member, Bert Noll, did
17 make an off-hand comment that this is about union dues.

18 However, I conclude that he made this comment sarcastically
19 in response to Page's perseveration on the topic of union
20 dues, a matter of no concern to the committee.

21 The timing of the committee's actions also raises come
22 question. However, as the Latin phrase, "posthok argo
23 prokhok" (phon.), cautions, there is a difference between
24 sequence and consequence.

25 Concluding that the JATC acted without unlawful

1 motivation, I recommend that the complaint be dismissed.

2 When a transcript of this proceeding has been prepared,
3 I will issue a certification which attaches as an appendix a
4 portion of the transcript reporting this bench decision.

5 Certification also will include provisions relating to the
6 findings, the facts, institutions (phon.) of the law and
7 order. When that certification is served upon the parties,
8 the time period for filing the appeal will begin to run.

9 Thank you for the great professionalism and courtesy
10 shown by all counsel in this proceeding.

11 The hearing is closed. Off the record.

12 (Whereupon, the proceedings were concluded at 3:25 p.m., March
13 19, 2003.)

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1 CERTIFICATE

2 This is to certify that the attached proceedings before the
3 National Labor Relations Board, Region 26,

4 Case Name: IBEW Local 429

5 Case No.: 26-CB-4240

6 Location: Memphis, Tennessee

7 Date Held: March 19, 2003

8 was held according to the record, and that this is the
9 original, complete, and true and accurate transcript that has
10 been compared to the reporting or recording, accomplished at
11 the hearing, that the exhibit files have been checked for
12 completeness and no exhibits received in evidence or in the
13 rejected exhibit files are missing, unless otherwise stated.

14 _____
15 DATE

CONTRACTOR

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